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MT LEGISLATIVE HISTORY

Chapter 432 1987

Bill H 720 S _____ Original bill & hist. ✓ C

H. Committee on judiciary		S. Committee on judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
2/16	✓C	3/25	✓C
_____	___C	_____	___C
Date Out 2/16	✓C	3/25	✓C

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

HOUSE BILL NO. 720

INTRODUCED BY SPAETH, ADDY, MAZUREK, CRIPPEN, MANUEL, MARKS, BRADLEY, COBB, RAMIREZ

IN THE HOUSE

FEBRUARY 12, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 13, 1987	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 16, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1987	PRINTING REPORT.
FEBRUARY 18, 1987	SECOND READING, DO PASS.
FEBRUARY 19, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 92; NOES, 3.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 4, 1987	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
MARCH 25, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 31, 1987 RECEIVED FROM SENATE.

SENT TO ENROLLING.

House BILL NO. 720

INTRODUCED BY Sparkman Ramirez

A BILL FOR AN ACT ENTITLED: "THE MONTANA CLOSE CORPORATION ACT; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

Section 2. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by [section 3] except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under [section 3].

Section 3. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 50 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

Section 4. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a

INTRODUCED BILL
HB 720

shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of 35-1-617 that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

Section 5. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of

law or otherwise, except to the extent permitted by the articles of incorporation or under [section 6].

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not

grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

Section 6. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of [section 5] must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(b) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall

deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all, but not less than all, of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or

instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of his offer to the corporation.

Section 7. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the

notice required by [section 4] was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after they are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

Section 8. Compulsory purchase of shares after death of shareholder. (1) This section and [sections 9 through 11] apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of [sections 9 through 11] may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of [sections 9 through 11], or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close

corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of [sections 9 through 11] is entitled to dissenters' rights under 35-1-810 and 35-1-812 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under [sections 9 through 11] by a signed writing.

(6) [Sections 9 through 11] do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of [sections 9 through 11].

Section 9. Exercise of compulsory purchase right. (1) A person entitled and desiring to exercise the compulsory purchase right described in [section 8] shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and

requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve

the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under [section 10].

Section 10. Court action to compel purchase. (1) (a) If an offer to purchase shares made under [section 9] is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located, or if there is no principal office in this state, its registered office.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in [section 24] together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

Section 11. Court costs and other expenses. (1) The

court in a proceeding commenced under [section 10] shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

Section 12. Shareholder agreements. (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of

the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by [section 13].

(5) A provision entitling one or more shareholders to dissolve the corporation under [section 21] is effective only if a statement of this right is contained in the

articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

Section 13. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as "designated directors".

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting

as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-401 or 35-1-515.

Section 14. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by [section 12].

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under [section 19], the corporation shall immediately adopt bylaws under 35-1-214.

Section 15. Annual meeting. (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by [section 12] fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (1).

Section 16. Execution of documents in more than one

capacity. Notwithstanding any law to the contrary, an individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

Section 17. Limited liability. The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

Section 18. Merger -- share exchange -- sale of assets. (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or

not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

Section 19. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under [section 13], the amendment must either comply with 35-1-401 or 35-1-515 or delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

Section 20. Effect of termination of statutory close corporation status. (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

Section 21. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one

days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-911 and 35-1-912.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

Section 22. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in [sections 23 through 25] if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break

the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-921.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located, or if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-810 and 35-1-812 with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under 35-1-812 or to demand payment under 35-1-810, or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under [sections 23

through 25] are in addition to any other right or remedy he may have.

Section 23. Ordinary relief. (1) If the court finds that one or more of the grounds for relief described in [section 22(1)] exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

Section 24. Extraordinary relief -- share purchase. (1) If the court finds that the ordinary relief described in [section 23(1)] is or would be inadequate or inappropriate, it may order the corporation dissolved under [section 25] unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if

appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under [section 25].

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share

purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

Section 25. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-921; or

(b) all other relief ordered by the court under [section 23 or section 24] has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

Section 26. Codification instruction. Sections 1 through 25 are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to sections 1 through 25.

Section 27. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 28. Severability. If a part of this act is

invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. Applicability. This act applies to all corporations electing statutory close corporation status under this act on and after the effective date of this act.

-End-

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
Senator Bruce Crippen, V. Chairman
Senator Tom Beck
Senator Al Bishop
Senator Chet Blaylock
Senator Bob Brown
Senator Jack Galt
Senator Mike Halligan
Senator Dick Pinsoneault
Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0720	3/04	3/25		CONCUR		3/25
SPAETH, GARY			ADOPT MODEL CLOSE CORPORATION ACT			
HB0737	3/02	3/26		CONCUR		3/26
BROWN, DAVE			PETITION FOR EXTENSION OF COMMITMENT IN COURT WHERE FACILITY IS LOCATED			
HB0740	3/02	3/26		CONCUR AS AMENDED		3/27
COBB, JOHN			ACCOUNTING FOR AND DISTRIBUTING FINES, ETC. IN JUSTICE COURTS			
HB0748	3/02	3/25		CONCUR AS AMENDED		3/26
RAMIREZ, JACK			ALLOW CORPORATIONS TO LIMIT DIRECTORS' LIABILITY			
HB0754	4/03	4/08		CONCUR AS AMENDED		4/9
BRADLEY, DOROTHY			PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS			
HB0761	3/02	3/26		TABLED		—
THOFT, BOB			ALTERNATIVE METHOD OF FURNISHING BAIL SET AT $1,000 OR LESS		Tabled 3/27	
HB0790	3/02	3/19		TABLED		3/27
REHBERG, DENNIS			COSTS AND ATTORNEY FEES OF SMALL BUSINESS PAID BY STATE IN CERTAIN ACTIONS			
HB0800	3/02	3/13		ADVERSE REPORT		3/13
RAPP-SVRCEK, PAUL			ALLOW DISCHARGE OF SUPPORT DELINQUENCIES IN CERTAIN INCOME WITHHOLDING CASES			
HB0805	3/02	3/17		TABLED		—
ROTH, RANDE			SUSPEND REGISTRATION AND PLATES FOR NONPAYMENT OF VEHICLE LIABILITY		Tabled 3/17	
HB0861	4/03	4/07		CONCUR AS AMENDED		4/9
NATHE, DENNIS			DISCLOSURE OF INFORMATION ON TRANSFER OF RAILROAD LINE			
HB0873	4/02	4/07		CONCUR		4/8
HANNAH, TOM			REVISE AND CLARIFY HOMICIDE LAW			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 25, 1987

The fifty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 25, 1987, by Chairman Joe Mazurek in Room 325 of the state Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 720: Representative Gary Spaeth, House District 84, opened the hearing on HB 720 which adopts the Model Statutory Close Corporation Supplement (approved by the ABA) to the Model Business Corporation Act (which Montana has). He informed the committee the proponents would explain the bill in more detail.

PROPONENTS: Steve Bahls, Assistant Professor of the University of Montana Law School, supported the bill and gave a brief outline of what the bill does. (Exhibit 1)

Amy Guth, a University of Montana law student and Marcella C. Quist, also a University of Montana law student, stated to the committee the detailed outline of what the bill will do when passed into law. The women were the law students who worked on the bill.

Don Ingels, Montana Chamber of Commerce, testified in support of the bill.

Bob Murdo, State Bar Business Law, felt it will simplify the process for incorporations.

OPPONENTS: There were no opponents.

DISCUSSION ON HOUSE BILL 720: Senator Pinsoneault asked Mr. Bahls if a business is currently incorporated, does the business amend their articles to convert to this law. Mr. Bahls answered it is available to existing corporations.

Senator Halligan asked if a business would lose its limited liability if they don't meet annually. Mr. Bahls replied that section 17 of the act provides that the

"corporate veil" will not be pierced for not meeting annually. He said this bill will stop that from happening.

Representative Spaeth closed by thanking the law students for their work.

CONSIDERATION OF HOUSE BILL 748: Rep. Jack Ramirez, Billings, opened the hearing on HB 748, which allows a corporation to amend its articles of incorporation to eliminate or limit a director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. He said different associations can't get directors to serve on corporation boards because of the liability problem. He said page 3 has the exceptions for the limited liability. He stated the bill will not affect director's liability outside the corporation.

PROPONENTS: Elwood English, representing the Secretary of State, supported the bill. (Exhibit 2)

Jim Robischon, Montana Liability Coalition, stated the bill doesn't diminish the shareholder's right against the officers of the corporation. He felt it will eliminate some pressure on directors, which may be a factor in these kinds of lawsuits.

George Bennett, Montana Bankers Association, said the bill will only affect state chartered banks. He stated the bill just affects the relationship between the banking corporation and the shareholders and the directors. (See witness sheet)

John Allen, Great Falls Gas Company, testified in support of the bill. (Exhibit 3)

John Hoyt, representing himself, supported the bill.

Joe Brunner, Montana Water Development Association, supported House Bill 748.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL 748: Senator Bishop inquired if there is a case example of this kind of lawsuit in Montana. Mr. English replied there has been none in Montana, but there have been several in Delaware. He said the nonprofit groups are the ones that really need this protection. He said if investors put money into stock and the market goes down, the shareholders might sue the broker or the business they invested into.

OPPONENTS: Jacquline Terrell, American Insurance Association, testified because the bill contravenes the theory of a corporation protecting its' officers and directors from personal liability. She said subsection (1) will force joint and several liability on corporations that continue their operation beyond the solvency point of 30 days.

Bryan Enderle, Missoula Chamber of Commerce, stated the bill is unfair because it makes officers and directors liable, so it defeats the purpose of incorporating.

DISCUSSION ON HOUSE BILL 474: Senator Pinsoneault asked if the bill just affects profit organizations. Rep. Moore answered it only affects the people making a profit.

Representative Moore closed the hearing on House Bill 474.

ACTION ON HOUSE BILL 720: Senator Pinsoneault moved House Bill 720 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT: There being no further business before the committee, the meeting adjourned.

SENATOR JOE MAZUREK, Chairman

mh

DATE March 25th

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Bryan Enderle	Missoula Chamber of Commerce	474		X
Elwood English	Secretary of State	567 748	X	
Tom Keegan		567		X
Bob Murdo	State Bar Business Law Section	HB 720	X	
Bob Correa	Bus. Chamber	567-720	X	
Kay Foster	Bus. Chamber Gov. Council on Ec. Develop.	567	X	
John C Hoyt	Hoyt & Bleamaster	567		X
Bryan Enderle	Missoula Chamber of Commerce	567/720/748	X	
Dave Angel	Mt Chamber of Commerce	720	X	
John Allen	Great Falls Bus Co	748	X	
Jerry Allen	Mt. Retail Assn	748	✓	
Jim Lear	Self -			
Jo Bourne	Mt Pet	748	✓	
Jacqueline Terrell	AIA	567	✓ amdts	X
"	"	474		X
Roger McGlenn	Independent Ins. Agents Assoc. of MT	567	✓ Amend	
Ted J. Dorey	Montana Dairymen's Association	720		
	Applied Management Corp.	748	X	
Brian Zins	Mt. Medical Assn	HB67	X	
Brian Zins	Mt. Medical Assn	HB748	X	
Gerald I. Neely	" "	HB567	X	
Randy Henry	State Farm + NAII	567	X amend	
Marcelle C. Quast	Mt Law School - Weedbuster	HB 720	X	
Amy Cattin	" "	720	X	
Steven C Bahls	U of M Law School	720	X	

(Please leave prepared statement with Secretary)

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		
	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 25, 1987
BILL NO. HB 720

TESTIMONY OF STEVEN C. BAHLS,

Assistant Professor of the
University of Montana School of Law

in Support of House Bill 720

The Montana Business Corporations Act, enacted in 1967, is the law that governs how corporations are formed, how they are operated, and how they are dissolved. This statute is based upon the Model Business Corporations Act. The Model Business Corporations Act was drafted in 1950, primarily by a group of Chicago lawyers.[1] Experience has shown that, while these lawyers adequately provided for the needs of large corporations, they failed to provide for the needs of small business. In Montana, small business, including farmers and ranchers, have frequently gotten into expensive litigation, in part, because of the failure of the Montana Business Corporations Act to address their needs.

Consider these hypothetical cases which are indicative of the problems a small business may have.

1. A mainstreet business with one owner incorporates. The owner of the business thinks that he will not be personally responsible for the corporation's debts because corporations are separate legal entities. If that owner fails to elect himself to his own board of directors, have meetings (presumably with himself) and

keep "minutes" of those meetings, he may be personally liable for the corporation's debts because he did not follow the Montana statute.[2]

2. After Dad dies, three brothers inherited a ranch. The two oldest brothers moved out of state and the youngest brother operated the ranch. The two out-of-state brothers, wanting to sell their stock in the ranch, sold it to an out-of-state corporation, which removed the youngest brother from operation of the ranch.[3]

House Bill 720, if adopted, would save small businesses such as these from the problems I just described:

1. Any lawyer knows that small businesses usually are operated by their primary owner, who ignores the corporate formalities (election of board of directors, annual meetings, minutes, etc.). In a small business these are needless and House Bill 720 allows a corporation to operate more informally without losing its corporate protection.

2. Small businesses want to keep ownership of the business in the family. This may be done under existing law, but only if complex and expensive legal documents are drafted. Under House Bill 720, the law will allow

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-25-87
BILL NO. H.B. 720

businesses to stay in the family by allowing the corporation the option to buy stock proposed to be transferred to outsiders.

Are we sailing into uncharted waters if we adopt House Bill 720? The bill is virtually identical to the Close Corporation Supplement to the American Bar Association Model Business Corporation Act. The Supplement was approved in 1984 by the American Bar Association Committee on Corporate Laws. As of last year 23 states have some sort of provisions in their business laws addressing the special needs of small corporations.[4] The legislature of Montana has periodically updated its Business Corporation Act in accordance with American Bar Association Model Act revisions.

What if a small business doesn't like the provisions of House Bill 720? The provisions of House Bill 720 apply to small business only if the small business so elects. If the small business doesn't like the provisions of House Bill 720, then it does nothing and the existing law applies.

Why would a small business want to operate under House Bill 720? There are three reasons, in addition to solving the problems described previously.

1. It allows small business flexibility to vary normal

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-25-87
BILL NO. H.B. 720

corporate rules to meet their business needs.

2. It protects shareholders who own less than 50% of the stock from unfair conduct by large shareholders.

3. It codifies the current practices of how business operates.[5]

I've recently seen publications[6] which state that there are more benefits associated with incorporating in the State of Delaware than any other state. Most of those advantages are available in Montana--with a few exceptions. One of those exceptions is the availability of a special corporate law for small business. We too ought to have that advantage.

Prior to coming to Montana, I practiced law for six years in the State of Wisconsin, which has adopted an act nearly identical to that of House Bill 720. Small business has had a good experience with it.

Montana is a state where there are few big businesses and many small businesses--including farms and ranches. A statute to meet their needs is important.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-25-87
BILL NO. H.B. 720

1. 6 Business Lawyer 1 (1950).

2. See Brewster, "Piercing the Corporate Veil", 44 Mont. L. Rev. 91, 96 (1983). See also E.C.A. Environ. Management Serv., Inc., ___ Mont. ___, 679 P.2d 213 (Mont. 1984); Scott v. Prescott, 69 Mont. 540, 552-53, 223 P. 490, 494 (1924); and Hansen Sheep Co. v. Farmers' & Traders' State Bank, 53 Mont. 324, 331, 163 P. 1151, 1153 (1917).

3. The Montana Supreme Court has been forced to deal with several cases where family members who each own stock in a corporation are deadlocked in bitter disputes. See Fox v. 7L Bar Ranch Company, ___ Mont. ___, 645 P.2d 929 (1982); Maddox v. Norman, ___ Mont. ___, 669 P.2d 230 (1983).

4. O'Neal, Close Corporations § 1.15 (1986). Twelve of these states have a separate integrated statute, most of them being patterned after Delaware's law. Model Business Corporation Act Annotated, 1 P. 1818 (1986).

5. Committee on Corporate Laws, "Proposed Statutory Case Corporation Supplement to the Model Business Corporation Act," 37 Bus. Law. 269 (1982).

6. See, e.g., The Red Book Digest of Delaware Corp. Procedures (1976).

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-25-87
BILL NO. H.B. 720

STANDING COMMITTEE REPORT

March 23 57
..... 19.....

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 720

Third reading copy (blue color)

Adopt model close corporations act.
Spaeth (Mazurek)

Respectfully report as follows: That HOUSE BILL No. 720

~~DO PASS~~ BE CONCURRED IN

~~DO NOT PASS~~

Senator ~~XXXXXXX~~ Mazurek
Chairman.

JUDICIARY COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members	District
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
665		2/19/87	2/23/87	tabled							
668		2/17/87				2/20/87					
670		2/17/87	2/20/87			2/20/87					
672		2/18/87	failed to meet deadline								
673	Transferred to Business & Labor.										
679		2/16/87	2/16/87	2/16/87							
680		2/18/87	2/23/87	tabled							
684		2/18/87	2/23/87	tabled							
685		2/18/87	2/18/87	tabled							
687		2/18/87	2/20/87	tabled (2/23)							
696		2/18/87	2/19/87	2/19/87							
704	from subcomm.	2/17/87	2/23/87	tabled							
715		2/16/87	2/16/87	tabled							
720		2/16/87	2/16/87			2/16/87					

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 16, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 16, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Meyers who were absent and Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 720:

Rep. Addy moved that HB 720, DO PASS. Rep. Addy moved to amend HB 720 by inserting "10". Rep. Daily moved a substitute motion to strike "50" and insert "25". Question was called, a voice vote was taken. The motion CARRIED 14-1 with Rep. Rapp-Svrcek dissenting. (See Amendments Attached). Rep. Daily moved that HB 720 DO PASS As Amended. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 720 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved to table HB 715. A voice vote was taken and the motion CARRIED 9-5. HB 715, TABLED.

ACTION ON HOUSE BILL NO. 679:

Rep. Addy moved that HB 679, DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 679, DO PASS.

ACTION ON HOUSE BILL NO. 664:

Rep. Gould moved that HB 664, DO PASS. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Cobb dissenting. HB 664, DO PASS.

ACTION ON HOUSE BILL NO. 655:

Rep. Addy moved that HB 655, DO PASS. Rep. Addy moved to amend by striking the language "shall" and inserting "may".

the taking of lands for the use of public and mines are taking land for their own use first.

Rep. Bulger asked Rep. Cobb if he knows what the situation of the law is in other mining states and Rep. Cobb stated that the law is eminent domain.

Rep. Addy asked Rep. Cobb what he thought of charging a fee to rent the land for the use of eminent domain and Rep. Cobb stated that that would be all right with him. Rep. Addy asked Mr. Shanahan the same question and he pointed out that it would be all right as long as it was made non discriminatory. He further stated that if the farmers are charged for the right of the road, the same rent, then the mining companies would go along with that.

Rep. Cobb closed the hearing on HB 715.

HOUSE BILL NO. 720, Rep. Spaeth, District No. 84, stated that basically this adopts the close corporation act in the state of Montana and allows small business, family run companies, ranches and farms the opportunity to incorporate.

PROPONENTS:

STEVEN C. BAHLS, Assistant professor of the University of Montana School of Law, stated that prior to his moving to Montana, he practiced law for six years in the State of Wisconsin, which has adopted an act nearly identical to that of HB 720. Small businesses have had a good experience with it. He urged support for this legislation and presented written testimony. (Exhibit A).

AMY GUTH, and MARCIE QUIST, Missoula Law School, submitted information on the Montana Closely Held Corporation Act and explained each section. (Exhibit B).

DON INGELS, Montana Chamber of Commerce, went on record in support of this legislation.

There were no opponents.

Rep. Spaeth closed the hearing on HB 720 by stating that this is a good bill and he urged support for it.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 12:42 p.m.

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)		✓	
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 16, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 720

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

Page 2, line 6.
Strike: "50"
Insert: "25"

FIRST reading copy (WHITE)
color

A
216 87
#720

TESTIMONY OF STEVEN C. BAHLS,

Assistant Professor of the
University of Montana School of Law

in Support of House Bill 720

The Montana Business Corporations Act, enacted in 1967, is the law that governs how corporations are formed, how they are operated, and how they are dissolved. This statute is based upon the Model Business Corporations Act. The Model Business Corporations Act was drafted in 1950, primarily by a group of Chicago lawyers.[1] Experience has shown that, while these lawyers adequately provided for the needs of large corporations, they failed to provide for the needs of small business. In Montana, small business, including farmers and ranchers, have frequently gotten into expensive litigation, in part, because of the failure of the Montana Business Corporations Act to address their needs.

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2. After Dad dies, three brothers inherited a ranch. The two oldest brothers moved out of state and the youngest brother operated the ranch. The two out-of-state brothers, wanting to sell their stock in the ranch, sold it to an out-of-state corporation, which removed the youngest brother from operation of the ranch.[3]

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corporate rules to meet their business needs.

2. It protects shareholders who own less than 50% of the stock from unfair conduct by large shareholders.

3. It codifies the current practices of how business operates.[5]

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1. 6 Business Lawyer 1 (1950).

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3. The Montana Supreme Court has been forced to deal with several cases where family members who each own stock in a corporation are deadlocked in bitter disputes. See Fox v. 7L Bar Ranch Company, ___ Mont. ___, 645 P.2d 929 (1982); Maddox v. Norman, ___ Mont. ___, 669 P.2d 230 (1983).

4. O'Neal, Close Corporations § 1.15 (1986). Twelve of these states have a separate integrated statute, most of them being patterned after Delaware's law. Model Business Corporation Act Annotated, 1 P. 1818 (1986).

5. Committee on Corporate Laws, "Proposed Statutory Case Corporation Supplement to the Model Business Corporation Act," 37 Bus. Law. 269 (1982).

6. See, e.g., The Red Book Digest of Delaware Corp. Procedures (1976).

EXHIBIT B
DATE 2-16-87
HB # 720

TESTIMONY
HOUSE JUDICARY COMMITTEE
FEBRUARY 16, 1987

MARCIE QUIST
AMY GUTH

EXHIBIT B
DATE 2-16-87
HB # 730

MONTANA CLOSELY HELD CORPORATION ACT

Section 1 Short Title

Section 2 Application of MBCA and SCC
- a. Unless specifically covered by the SCC the MBCA controls
- b. SCC may also apply to a Professional Corp. Supp.
- c. SCC does not repeal or modify any statute or rule of law under MBCA of PCS

Section 3 Definition and Election of SCC
- a. Definition of SCC (stated in the Articles of Incorporation)
- b. Election of a an existing Corporation with 50 or fewer shareholders is by two-thirds of each class of shares
  - -allowance of Dissenters rights

Section 4 Notice of SCC on Shares
- a. Conspicuous statement of election of SCC
- b. Written notice by Corp. after issuance or transfer
- c. SCC and MBCA notice of transfer restrictions satisfied
- d. Knowledge of documents is constructive notice of restricted transfer of shares
- e. Upon written request the Corporation shall provide of any provisions restricting transfer of shares or voting rights

Section 5 Share Transfer Prohibition
- a. May not be voluntary or involuntary transferred except if permitted by the Articles of Incorporation or after First Refusal
- b. Exceptions to share transfer prohibition
  - -holders of the same class of shares
  - -shareholders immediate family (defined)
  - -transfers approved in writing by all shareholders
  - -transfer to a fiduciary party
  - -merger or share exchange
  - -pledge as collateral (granted without voting rights)
  - -after termination of the SCC status

Section 6 Share Transfer After First Refusal by Corporation
- a. The SCC must be given first offer to purchase shares
  - -Price determined by third party offer
- b. Qualification of a third person
- c. Procedure for first refusal
- d. Logistics and procedure for acceptance of offer by Corp.
- e. Allocation of purchased shares
- f. Transfers to third parties within 120 days

Section 7 Attempted Share Transfer in Breach of Prohibition
- a. Any transfer in violation of prohibition is ineffective
- b. Exception: Transferee without notice gives Corp. option to purchase same terms and price.

Section 8 Compulsory Purchase of Shares after Death of

EXHIBIT B
DATE 2-16-87
HB # 720

Shareholder
a. If provided in Articles of Incorporation, Corporation required to purchase decedents's shares
b. Modifications of this provision must be in the Articles of Incorporation
c. Modification of mandatory decedent's share purchase provisions must be approved by two thirds shareholders vote
d. Dissenter's rights to shareholder to rights are affected
e. Written waiver
f. Additional agreements for purchase of decedent's shares allowed

Section 9 Exercise of Compulsory Purchase Right
a. To exercise right - written notice to Corp. w/in 120 days
b. Procedure for purchase right - majority vote on option
c. Purchase offer w/in 75 days, accompanied w/ financial information of Corp.
d. Allocation of purchased shares to shareholders
e. Pre agreed price or terms govern compulsory purchase under court action to compel purchase

Section 10 Court Action To Compel Purchase
a. Right to proceeding to compel share purchase
-Corp required to provide notice to shareholders of action
b. Court determines the fair market value (and orders purchase)
c. Corp. may petition court to modify
d. If payment is not made w/in 30 days, court may dissolve
e. Person indemnifying payment for Corp., may recover from defaulter

Section 11 Court Costs and Other Expenses
a. Court determines full costs, inc. lawyers fees, experts, appraisers and assess equally to corp. and the party
b. All costs may be assessed to:
(1) The party: if fair value fails to substantially exceeds last purchase offer and is refused in bad faith
(2) The Corp: if fair value substantially exceeds last purchase offer and is refused in bad faith

Section 12 Shareholder Agreements
a. Shareholders may agree in writing to the management, powers and relationship of shareholders of the Corp.
b. The agreement is effective even if it;
(1) Eliminates board of directors
(2) Restricts discretion or powers of board
(3) Treats corp. as partnership
(4) Creates a partnership relationship among shareholders
c. Any powers transferred by agreement from the board to shareholders, also transfers the liability (imposed by law) from the power to the shareholder
d. The Articles of Incorporation must state the agreement to eliminate the board of directors

e. The Articles of Incorporation must state entitlement of any shareholder to dissolve Corp.
f. Unless other wise provided for in the agreement, all shareholders must agree to any amendment of the agreement
g. Before shares are issued, all subscribers may act as shareholders
h. This section does NOT prohibit additional agreements

Section 13 Elimination of Board of Directors
a. With a statement in the Articles of Incorp, Scc may eliminate the board of directors
b. Amendment to Articles of Incorporation for elimination of board requires approval of all shareholders
c. Without a board of directors;
(1) business and affairs are managed by shareholders
(2) actions requiring directors approval then requires shareholder approval
(3) Shareholders are only liable for actions they have right to vote on
(4) Shareholder approval in SCC equals board approval as required by a state or the United States
(5) Resolutions by shareholders may appoint "designated directors" to sign documents
(6) Amendment to restore board of directors requires two thirds vote of shareholders and names of new board

Section 14 Bylaws
a. No bylaws are required if provisions required by law are present in either the articles of incorporation or shareholders agreements
b. When SCC status terminates the Corp must adopt bylaws

Section 15 Annual Meeting
a. Unless provided for otherwise, the annual meeting date is the first business day after May 31st.
b. Annual meeting is not required

Section 16 Execution of Documents in More than One Capacity
Individuals may hold more than one office in corp.

Section 17 Limited Liability
Failure to exercise formalities shall not place Corp. liabilities on the shareholders

Section 18 Merger, Share Exchange, and Sale of Assets
a. Any merger or share exchange:
(1) That would terminate the SCC status, must be approved by two thirds of the shareholders
(2) That would create a SCC status, must be approved by two thirds of the shareholders
b. Any sale, etc. of substantially all of the property, must be approved by two thirds of the shareholders

Section 19 Termination of Statutory Close Corporation Status
a. A SCC is terminated by deletion of election of SCC

EXHIBIT B
DATE 2-16-87
HB 720

in the articles of incorporation
b. Amendment must be approved by two thirds
c. Dissenters' rights for shareholders

Section 20 Effect of Termination of Statutory Close Corp Status
a. A Corp. that terminates SCC status is subject to the MBCA or Professional Corp Supp.
b. Upon termination of SCC status, rights of shareholders or Corp under agreement are reserved subject to SCC, MBCA or the law of the state

Section 21 Shareholder Option To Dissolve Corporation
a. Articles of Incorporation may authorize one or more shareholders to dissolve Corp. at will or specific event.
Notice required
31 days after notice - wind-up and liquidation begins
b. Unless provided otherwise, amendment to dissolution provision requires unanimous vote by shareholders

Section 22 Court Action to Protect Shareholders
a. Right of shareholder to petition court for relief if:
(1) when directors or controlling shareholders act illegally, oppresively, fraudulently, or unfairly to shareholder
(2) when those in control are dead locked in management
(3) there exists grounds for dissolution under the MBCA
b. Jurisdiction is in the district court
c. No petition allowed after agreement in writing to pursue nonjudicial remedy
d. Shareholder with dissenters' rights, must proceed under this section first, before demand of payment under MBCA
e. Rights granted in this section are in addition to other rights or remedies

Section 23 Ordinary Relief
a. Types granted:
(1) performance, prohibition, alteration or setting aside of action
(2) cancellation or alteration of any provision
(3) removal of director or officer
(4) appointment of director or officer
(5) accounting
(6) appointment of custodian
(7) appointment of provisional director
(8) payment of dividends
(9) award of damages
b. For action in bad faith, court may award attorneys fees, reasonable expenses, etc.

Section 24 Extraordinary Relief: Share Purchase
a. If ordinary relief is inadequate/inappropriate court may order dissolution unless corp. purchases shares
b. For share purchase, court shall:
(1) determine fair value of shares

EXHIBIT 6
DATE 2-16-87
HB #720

(2) specify terms of the purchase
(3) require the seller to deliver all the shares
(4) prevent further action by shareholder
(5) define time frame before dissolution penalty for non payment

c. after order, any party may petition for modification
d. In the event of court dissolution, selling shareholder retains same rights and priorities in corp.'s assets

Section 25 Extraordinary Relief: Dissolution
a. Court may dissolve if:
(1) there are grounds under MBCA
(2) other relief ordered by court
b. Court may not refuse to dissolve solely because the corp. has accumulated earnings or current operating profits

Section 26 Codification

Section 27 Savings Clause

Section 28 Severability

Section 29 Application to Existing Corporation
a. Existing corp.'s may elect status

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 730 DATE Feb. 16, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Marcella C. Quist	Missoula - Mod. Mont Law Inst	4	
Steven C Bahls	Missoula - U of M Law Prof	✓	
Don Ingels	Mt Chamber of Commerce	✓	
~~Pat Sullivan~~	~~Helena~~		
Amy Guth	Missoula - Law School	✓	
PAM LANGLEY	Montana Agri Business Assn	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33